

Memorandum



Date: April 21, 2015
To: Honorable Chairman Jean Monestime
and Members, Board of County Commissioners
From: Carlos A. Gimenez
Mayor

Agenda Item No. 8(F)(8)

Subject: Recommendation to Reject Sole Proposal Received: Development, Management, and Operation of the Miami-Dade Regional Soccer Park

Recommendation

It is recommended that the Board of County Commissioners (Board) approve the rejection of the sole proposal received under *Request for Proposals (RFP) No. 00047, Development, Management, and Operation of the Miami-Dade Regional Soccer Park*. Miami-Dade County (County) issued the solicitation to obtain proposals from experienced and qualified firms to establish a premier soccer complex at 9000 NW 58 Street, Miami, Florida 33178, including all associated design, construction, management, and marketing on behalf of the Parks, Recreation and Open Spaces Department. The RFP required the selected proposer to fully fund all costs associated with the development and operation of the soccer park, and also pay rent to the County.

The sole proposal received from GoodSports Enterprises Global, LLC (GoodSports) was deemed non-responsive by the Office of the County Attorney because GoodSports did not submit the required Price Proposal Schedule or specify how much rent it would pay the County. Furthermore, GoodSports took exception to the RFP's requirement that the proposer wholly fund the project and proposed that the County contribute \$30,000,000 towards the soccer park's capital costs.

A new solicitation will be developed and re-advertised. Additional efforts are being made to foster more interest in the project. More specifically, the County is inquiring as to why industry vendors did not respond and is posting the draft solicitation on the County's website for industry comment before it is competitively advertised.

Scope

The project location is located in Commission District 12, which is represented by Commissioner Jose "Pepe" Diaz. However, the impact of this project will be countywide when completed.

Fiscal Impact/Funding Source

There is no fiscal impact to the County with the rejection of the sole proposal. However, when this contract is ultimately awarded, it is anticipated that it will be a revenue-generating through rent payments to the County by the operator.

Track Record/Monitor

Beth Goldsmith of the Internal Services Department is the Procurement Contracting Officer.

Vendor Not Recommended for Award

On May 22, 2014, the RFP was issued under full and open competition. Award would have been made to the responsive, responsible proposer satisfying the criteria established in the solicitation.

| Proposer | Reason for Not Recommending |
|------------------------------------|-----------------------------|
| GoodSports Enterprises Global, LLC | Rejection of proposal |

Applicable Ordinances and Contract Measures

- The two (2) percent User Access Program provision would not have applied because it is a revenue generating contract.
- The Local Preference Ordinance was included in the solicitation.
- The Local Certified Service-Disabled Veteran's Business Enterprise Preference was included in the solicitation.
- Contract measures would have applied to projects identified by the selected proposer.
- The Living Wage Ordinance would not have applied.

Attachment



Michael Spring
Senior Advisor



MIAMI-DADE COUNTY COUNTY ATTORNEY'S OFFICE

To: Fred Simmons, Procurement Contract Officer
Internal Services Department

From: Monica Rizo, Assistant County Attorney *Monica Rizo
executed on 11/26/15*

Re: Responsiveness of Proposal - RFP No. 00047 for Development, Management, and Operation of the Miami-Dade Regional Soccer Park

Date: October 28, 2014

You have asked this office whether the County can consider the proposal from GoodSports Enterprises Global, LLC¹ ("GoodSports") for Request for Proposals ("RFP") No. 00047 for Development, Management, and Operation of the Miami-Dade Regional Soccer Park. For the reasons set forth below, we conclude that GoodSports' proposal is non-responsive to the RFP and the County does not have the discretion to accept it.

FACTS

We rely on the information provided in your e-mails dated September 2 and 16, 2014. According to your e-mails, only one proposer submitted a proposal in response to the RFP: GoodSports. You indicate that GoodSports: (1) did not include the required pricing proposal form, referred to as Form B-1 in the RFP, in its submission nor did it include the information sought by Form B-1 elsewhere in its proposal; (2) in its proposal, is requesting the County contribute \$30 million of the project costs; and (3) declined to provide the financial information requested by the RFP relating to GoodSports' financial capability². We also rely on the information contained within the RFP and GoodSports' proposal.

Specifically, the RFP states that the County "seeks to establish a soccer complex to serve as a year-round premier public park facility freely available for open or scheduled tournaments and team development . . ." (§1.1 of the RFP) and is "looking for this development to be fiscally

¹ While your e-mails refer to the proposer as "GrandSports Enterprises, LLC", this seems to have been a mistake as there was only one proposer to the RFP and the name listed on its proposal is GoodSports Enterprises Global, LLC. Therefore, this opinion assumes that all references to GrandSports Enterprises, LLC in your correspondence are references to the sole proposer-GoodSports.

² GoodSports' failure to provide information sought by Section 2.12 of the RFP regarding its financial capability is not an issue of responsiveness but rather of responsibility; i.e. the ability of the proposer to meet the obligations set forth in the RFP and the corresponding contract. As this opinion finds that GoodSports' proposal is not responsive, then it is unnecessary to elaborate further on the issue of proposer responsibility.

sustainable for the selected Proposer and require no capital or operational support by the County” (§2.7 of the RFP). The RFP explicitly states that “[t]he County is limited to providing the Site as-is, where-is, without further contribution. . . . The Site was acquired by PROS in 2007, remediated and made fully developable by the County in 2010.” *Id.* at §2.1. Indeed, the County issued the RFP in order to select a “Proposer [that] will be responsible for the design, permitting, construction, construction management, operation, business planning, maintenance, and other aspects of the MDRSP **that will provide a turn-key operation to the County.**” *Id.* (emphasis added). “The selected Proposer shall, **at its sole expense**, address as part of their proposal any inconsistency or need between the existing condition and the conditions needed for proposed use.” *Id.* at §2.3.1 (emphasis added).

The RFP advises proposers that in responding to the solicitation, “Proposer[s] shall RETURN THIS ENTIRE PROPOSAL SUBMISSION PACKAGE”, inclusive of the Form B-1, Price Proposal Schedule, to the County. The Form B-1 requires proposers to submit: (1) a price for initial annual rent for the property for the time before beneficial occupancy; (2) minimal annual guaranteed rent for the property for the time after beneficial occupancy; (3) percentage of monthly gross revenues from all fees, goods and services provided at the property after the beneficial occupancy; and (4) a “no[n] negotiable” project management fee totaling 1.5% of the total development cost of the project. The Form B-1 advised proposers that the County was seeking “a payment structure from Proposers that best approximates or exceeds th[e] total return amount [of \$1,330,000] to the County through the proposed combination of” the aforementioned payments. Finally, the RFP provides that Proposers cannot take any exceptions to the terms of the solicitation “that, in the County’s sole discretion, constitutes a material deviation from the requirements of the Solicitation. Proposals taking such exception may, in the County’s sole discretion, be deemed non-responsive.” *Id.* at §1.3.

GoodSports failed to provide a completed B-1 Form along with the submission of its proposal. Instead, and in response to the RFP requirement that sought “a cash flow pro forma showing ten (10 years of projected sales and expenses . . . including any pre-rent, land rent and participation rent paid to the County,” GoodSports referred the County to “pro forma statements” it had prepared. *See* GoodSports’ proposal at p. 122. GoodSports’ pro forma statements, subdivided into the “Hotel Pro Forma” and the “Sports Facility Pro Forma,” failed to discernably include any line item or figures for expenses related to either pre-rent, land rent or participation rent to be paid to the County. *Id.* at 123-124. Further, in response to the RFP requirement that proposers describe their “ability to access and/or provide all the necessary funding to complete proposed improvements, if any, and all start-up activities proposed,” GoodSports’ stated that it “is requesting the County contribute \$30M[illion] of the project costs in anticipation of the annual recurring economic impact as a result of this investment.” *Id.* at 125. GoodSports’ again identified \$30,000,000 as a source of funds for the development of the project in a chart titled “Financial Overview”, indicating that the funds would come from “Municipality.” *Id.* at 126. Then, as to the RFP requirement that proposers identify “any exception to the terms of this solicitation. . . . [and to] indicate what alternative is being offered and the cost implications of the exception(s)”, GoodSports responded that its “business model is premised upon a public – private partnership with the local government body,” and that it “propose[d] to implement this public-private partnership through **the long-term lease of the real property** underlying the

fieldhouse, hotel and ancillary retail at a nominal cost per year, with an initial term of 50 years.”³ *Id.* at 127 (emphasis added).

DISCUSSION

Based on the facts set forth above, GoodSports’ proposal is not responsive to the RFP and the County does not have the discretion to accept it.

Generally, a proposal may be rejected or disregarded if there is a material variance between the proposal and the solicitation. *Glatstein v. City of Miami*, 399 So. 2d 1005, 1008 (Fla. 3d 1981). Florida courts have used a two part test to determine if a specific noncompliance in a proposal constitutes a substantial and thus nonwaivable issue: (1) whether the effect of a waiver would be to deprive the governmental entity of its assurance that the contract will be entered into, performed and guaranteed according to its specified requirements; and (2) whether it is of such a nature that its waiver would adversely affect competitive bidding by placing a bidder in a position of advantage over other bidders or by otherwise undermining competition. *See Robinson Electric Co. v. Dade County*, 417 So.2d 1032, 1034 (Fla. 3d DCA 1982).

GoodSports’ proposal fails both prongs of the test. First, GoodSports has failed to provide the County with the assurance that the contract will be entered into, performed and guaranteed according to its specified requirements. The RFP requires that the design, development, construction and operations of the soccer park be fully funded by the winning proposer with no further cost or contribution by the County and requires that the winning proposer also pay various forms of rent to the County and a fixed project management fee. GoodSports’ instead offers to have the County contribute \$30 million of capital costs for the development of the regional soccer park and altogether fails to specify how much rent- either pre-rent, land rent or percentage rent, it would pay the County other than to say its offer was for a “nominal” amount. Thus, GoodSports’ unspecified “nominal” rent deprives the County of the assurance that it will receive the 1.5% project management fee required by the RFP and a specified rent and that it will not need to contribute any County funds towards the development of the soccer park.

Next, the variations in GoodSports’ proposal, if accepted, would adversely affect competitive bidding by undermining competition and placing GoodSports in a position of competitive advantage over other potential bidders. While GoodsSports was the only proposer for the RFP, the County is still “not entitled to omit or alter material provisions required by the RFP because in doing so the public body fails to inspire public confidence in the fairness of the RFP process.” *Emerald Correctional Management v. Bay Cnty. Bd. Of Cnty. Commissioners*, 955 So. 2d 647, 653 (Fla. 1st DCA 2007) *citing State, Dep’t of Lottery v. Gtech Corp.*, 816 So. 2d 648 (Fla. 1st DCA 2001). A governmental entity cannot accept terms from a proposer that were not contemplated by the RFP because then the governmental entity would be engaging in favoritism. *Id.* at 654. The RFP clearly specified that no County funds were available for the regional soccer park project and it was the responsibility of the winning proposer to fully fund the design, development, construction and operations of the facility. This requirement of the RFP cannot be waived in order to allow the County to consider GoodSports’ request for \$30 million of County funds because other potential bidders, if offered the same opportunity to

³ The Agreement attached to the RFP only contemplated an initial term of 20 years with two, 10-year options to renew exercisable by the winning proposer.

obtain County funds towards the development cost of the project, may have submitted a proposal for the RFP and been ranked above GoodSports. The County may not engage in favoritism towards GoodSports and is thus obligated to reject its proposal.



MEMORANDUM

(Revised)

TO: Honorable Chairman Jean Monestime
and Members, Board of County Commissioners

DATE: April 21, 2015

FROM: 
R. A. Cuevas, Jr.
County Attorney

SUBJECT: Agenda Item No. 8(F)(8)

Please note any items checked.

- ☐ "3-Day Rule" for committees applicable if raised
- ☐ 6 weeks required between first reading and public hearing
- ☐ 4 weeks notification to municipal officials required prior to public hearing
- ☐ Decreases revenues or increases expenditures without balancing budget
- ☐ Budget required
- ☐ Statement of fiscal impact required
- ☐ Ordinance creating a new board requires detailed County Mayor's report for public hearing
- ☐ No committee review
- ☐ Applicable legislation requires more than a majority vote (i.e., 2/3's ____, 3/5's ____, unanimous ____) to approve
- ☐ Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 8(F)(8)
4-21-15

RESOLUTION NO. _____

RESOLUTION APPROVING REJECTION OF SOLE
PROPOSAL RECEIVED IN RESPONSE TO REQUEST FOR
PROPOSALS NO. 00047 FOR THE DEVELOPMENT,
MANAGEMENT AND OPERATION OF THE MIAMI-DADE
REGIONAL SOCCER PARK

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board approves rejection of the sole proposal received in response to Request for Proposals No. 00047, Development, Management and Operation of the Miami-Dade Regional Soccer Park.

The foregoing resolution was offered by Commissioner _____, who moved its adoption. The motion was seconded by Commissioner _____ and upon being put to a vote, the vote was as follows:

| | |
|-------------------------------------|----------------------|
| Jean Monestime, Chairman | |
| Esteban L. Bovo, Jr., Vice Chairman | |
| Bruno A. Barreiro | Daniella Levine Cava |
| Jose "Pepe" Diaz | Audrey M. Edmonson |
| Sally A. Heyman | Barbara J. Jordan |
| Dennis C. Moss | Rebeca Sosa |
| Sen. Javier D. Souto | Xavier L. Suarez |
| Juan C. Zapata | |



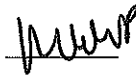
The Chairperson thereupon declared the resolution duly passed and adopted this 21st day of April, 2015. This resolution shall become effective upon the earlier of (1) 10 days after the date of its adoption unless vetoed by the County Mayor, and if vetoed, shall become effective only upon an override by this Board, or (2) approval by the County Mayor of this Resolution and the filing of this approval with the Clerk of the Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By: _____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.



Monica Rizo Perez